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COMMITTEE AGAINST TORTURE

Tenth session

SUMMARY RECORD OF THE THIRD PART (PUBLIC)* OF THE 145th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 23 April 1993, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Consideration of the report of Hungary (continued)

Consideration of the report of China (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.145/Add.1 and the summary record of the first part (public) as document CAT/C/SR.145.

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The third part (public) of the meeting was called to order at 11.45 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Consideration of the report of Hungary (CAT/C/17/Add.8) (continued)

1. At the invitation of the Chairman, Mr. Lontai (Hungary) took a place at the Committee table.

2. Mr. MIKHAILOV read out the Committee's conclusions:

"The Committee against Torture

...

has noted with satisfaction the progress made in Hungary in continuing the democratic process and implementing the Convention against Torture both from the legislative point of view and in judicial practice.

The Committee expresses the hope that specific provisions of the Penal Code and new administrative measures will lead to even more effective prevention of acts of torture.

The Committee also suggests that the training programmes for the different professional categories involved in implementing the Convention should be developed further."

3. Mr. LONTAI (Hungary) said that the Hungarian Government was convinced that human rights issues were not exclusively within a country's domestic jurisdiction. On the strength of that conviction, the Government had eliminated the reservations it had made concerning various international conventions and now recognized the competence of the international bodies. It was on that basis that it wished to hold a dialogue with the Committee.

The meeting was suspended at 11.50 a.m. and resumed at 12.05 p.m.

Consideration of the report of China (CAT/C/7/Add.14) (continued)

4. At the invitation of the Chairman, the delegation of China took places at the Committee table.

5. Mr. JIN Yongjian (China) said that he would do his best to reply to members' questions. He would first reply to Mr. Dipanda Mouelle's question concerning the five-year programme on the fundamentals of law. In 1991, the Standing Committee of the People's National Congress had decided to launch a second universal campaign on the subject. Its aim was to raise awareness and improve basic knowledge of the judicial system.

6. In connection with paragraph 88 of the report (CAT/C/7/Add.14), Mr. Dipanda Mouelle had asked about the period of detention during investigation, which could not last more than two months. The detention involved was neither pre-trial nor administrative detention; in conformity with article 92 of the Penal Code, the two-month period was designed to

guarantee that the procedure would run smoothly. During that period, if it was decided that criminal proceedings were not necessary, the case was closed and the suspect was immediately released. The public security organs then had to prepare a report stating whether proceedings had been initiated or whether they had not been necessary; the report was transmitted to the people's procuratorate for consideration.

7. The following were the figures relating to complaints filed for acts of torture:

1990: 472 complaints filed
279 prosecutions initiated
270 cases concluded

1991: 407 complaints filed
307 prosecutions initiated
279 cases concluded

1992: 339 complaints filed
189 prosecutions initiated
180 cases concluded

8. According to the Penal Code of China, every citizen had the right of appeal. The presiding judge could decide to refer a case to the arbitration committee. If the People's Supreme Court decided that there had been an erroneous judgement, it could refer the case for re-examination or require a new trial. If the People's Supreme Procuratorate discovered an error, it could contest a conviction. In 1992, of 36,961 appeals, the judgement was maintained in 63.3 per cent of cases, the trial reviewed in 24 per cent of cases, the case dismissed in 2.3 per cent of cases and a new trial ordered in 7 per cent of cases.

9. In reply to a question on compensation of victims of torture, he said that under article 31 of the Penal Code, if an act of torture resulted in death the person responsible was brought before the people's court. The perpetrator of an act of torture was required to compensate his victim, or the victim's descendants if the victim had died. If the perpetrator had no money, his production unit addressed a request to the financial department, which compensated the victim. Foreigners had exactly the same rights as Chinese nationals in that area.

10. In reply to a question on the education and training of judicial staff, medical practitioners and other categories of staff, he said that the Government attached great importance to training judicial staff and that there were several levels of education and practical training. Judicial staff were required to respect certain professional principles. Training was based on domestic laws, but also on the international conventions to which China was a party, in particular the Convention against Torture. The training of medical staff was specifically medical; no judicial training was provided. The role of armed forces personnel was to defend the country; they had no administrative or judicial role. Their training was basically military, but they were involved in the five-year programme to raise awareness of the fundamentals of law. In 1958, the Ministry of Justice had prepared a 10-point

list of principles to observe, one of which prohibited the obtaining of confessions by torture. In 1983 a code of conduct for the judicial and legislative professions had been published; it required the observance of certain principles and laid down the obligation for the professions concerned to deal with cases in a civilized manner, and in particular never to try to obtain confessions by torture. In 1988, when China had become a party to the Convention against Torture, the Minister of Public Safety had issued a circular requiring the people's police to study and apply the provisions of the Convention.

11. In reply to a question by Mr. Khitrin on whether the people's congress could intervene in decisions on the length of prison terms, he said that under the Chinese Penal Code, the people's congress acted only to confirm the decisions of the courts and to make sure that the courts did not take any arbitrary decisions. Regarding the question of extortion of confessions through torture or illegal means, the Penal Code stipulated quite clearly that the judicial bodies in charge of investigating criminal cases could in no case base their judgement on evidence obtained through such means and that if no other evidence could be found, no penalty could be imposed.

12. Several members of the Committee had asked about the definition of the concept of torture in Chinese legislation and the mechanisms provided to punish persons responsible for acts of torture. In that connection, chapters IV and VIII of the Penal Code contained specific provisions guaranteeing the protection of individuals against any violation of their rights; more precisely, article 136 stipulated that any person found guilty of extorting confessions through torture, the definition of which corresponded to that appearing in article 1 of the Convention, was liable to a prison term commensurate with the seriousness of the offence, and, in particularly serious cases, to the death penalty. Article 143 of the Penal Code provided for a three-year prison term for any official who harassed or humiliated a prisoner, a prison term of three to six years if the ill-treatment caused injury or disability, and at least seven years' imprisonment if the ill-treatment resulted in death. Article 145 of the Penal Code laid down a three-year prison term for anyone who inflicted mental torture on an individual. Under article 146 if an official was found guilty of such an offence, the penalty was a minimum of seven years' imprisonment. Under article 188 members of the judiciary guilty of abuses of power were liable to up to 15 years' imprisonment. Finally, in accordance with article 189 of the Penal Code, any staff member of a prison establishment who was found guilty of corporal punishment or ill-treatment of prisoners might be sentenced to up to 10 years' imprisonment. Those were the applicable provisions of the Penal Code, but the Civil Code also contained provisions providing compensation for moral suffering. For example, article 101 of the Civil Code provided that citizens had the right to respect of their reputation and dignity and that any act of slander or delation was punishable by law. Article 105 guaranteed citizens the right to respect of their reputation and the right to compensation for injury to their reputation. Procedures were laid down for the investigation of crimes of torture. Chapter II of the Penal Code set out the procedure to be followed in investigating alleged offences, and chapter III set out the procedure for the trial in the criminal courts of persons charged with acts of torture.

13. Replying to Mr. Khitrin's question on the reform-through-labour camps, he said that persons held in such camps were entitled to free medical care and in cases of serious illness could be released on parole for treatment in a hospital. Generally speaking the quality of the medical care provided in prison establishments was higher than the national average. The death rate in detention camps was extremely low, and the staff were strictly forbidden to inflict humiliation, ill-treatment or torture on the prisoners; if such acts were committed, the incident was investigated and those responsible punished. In 1990 and 1991, 21 officials had been punished for offences of that kind, but no cases of torture or ill-treatment had been reported in 1992. In 1993, there were 684 reform-through-labour centres in China, 155 penitentiaries, 492 rehabilitation centres and 37 social re-insertion centres for offenders. The entire prison population was 1,209,945 prisoners, which represented a proportion of approximately 1 per 1,000 inhabitants.

14. Regarding the persons convicted of counter-revolutionary crimes, he said that the sentences had been imposed by judicial bodies in strict conformity with articles 91 and 102 of the Penal Code in the light of the gravity of the offences committed. On another matter, in both penitentiaries and reform-through-labour camps, men were housed separately from women and adults from minors. Solitary confinement applied only to the small number of prisoners who committed serious breaches of prison regulations; the decision had to be approved by the competent authorities and the period in solitary confinement could not exceed 15 days. Prisoners in solitary confinement were entitled to the same health and living conditions as other prisoners and were given support in the form of discussions aimed at helping them to mend their ways. Any violation of the regulation concerning their conditions of detention was punishable under the law.

15. In reply to questions concerning the independence of the judiciary, he said that under article 126 of the Constitution, the courts exercised judicial power independently and were not subject to interference from administrative organs, social groups or individuals. The Chinese judicial system was based on the responsibility of the judiciary to the people's congress, but the courts enjoyed complete independence in making decisions. Judges were elected by the Standing Committee of the People's National Congress and could be removed by it. The Procurator-General was elected by the People's Congress and the people's procuratorates were appointed at the local level by the people's congresses. The independence of the courts with respect to social groups was guaranteed, and the Communist Party, whose only function was to set the country's general political orientations, did not intervene in the decisions of the judicial bodies in any way.

16. The CHAIRMAN thanked the delegation for the information it had supplied and said that it would be able to give further replies at a later meeting.

The meeting rose at 1 p.m.